

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of

Implementation of the Pay Telephone
Reclassification and Compensation
Provisions of the Telecommunications Act
of 1996

CC Docket No. 96-128

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**OPPOSITION OF AMERITECH
TO PETITIONS FOR RECONSIDERATION**

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SUMMARY

The Commission's pay telephone compensation plan is fundamentally sound, and objections to its choice of a market-based compensation mechanism should be rejected. Section 276 seeks to make the LECs look more like private pay telephone providers, and a return to cost-related pricing would move in the opposite direction, turning private payphones into LECs.

Objections to various details of the plan are also unsound. In particular, LECs should not be placed on the list of carriers contributing to the \$45.85 flat rate, since they receive only a small measure of the specific types of traffic the \$45.85 is intended to stand for. Also, efforts to exclude semi-public and low-volume payphones from compensation would grossly distort the plan and should be rejected. Similarly, the sending of screening digits by LECs should not become a condition of their receiving pay telephone compensation, since those issues are the subject of individual consideration in another docket.

Ameritech still maintains that its existing tariffed 25¢-per-call payphone charge should continue to apply to interLATA presubscribed "0+" traffic in addition to the \$45.85 flat-rate interim compensation,

just as the existing payments made for "0+" traffic to non-LEC pay telephones will continue to accumulate on top of the \$45.85. Of course, if the Commission approves the 35¢-per-call LEC "0+" compensation at inmate telephones as sought by the RBOC Coalition, Ameritech's 25¢ charge will become a moot issue at inmate telephones. On the other hand, however, even if the Coalition's request is denied, Ameritech's existing "0+" payments should continue just the same, since there would be no justification in invoking Section 276 to cancel payphone compensation that is already being paid, but which is not yet being replaced.

Finally, the Commission should confirm that intangible assets are limited to those recorded on the LECs' books, and it should reject arguments seeking to otherwise modify the asset valuation rules it has proposed in the Order.

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**I. The Commission Should Reject Proposals
To Return to Cost-Based Pricing.**

Some parties, led by AT&T,¹ object to the Commission's choice of a market-based compensation mechanism, contending that the Commission should have instead adopted "a TSLRIC-based (or other forward-looking cost based) compensation system"² such as that prescribed in

¹ AT&T Corp., Petition for Reconsideration and Clarification, filed Oct. 21, 1996 [hereinafter "AT&T"], at 5-15.

² *Id.* at 2.

the Commission's recent local competition order.³ However, the Commission's pay telephone plan is fundamentally sound in this respect, and should not be disturbed. Section 276 is essentially a unique and self-contained part of the Telecommunications Act, and concepts that have been developed to implement Section 251 or any other parts of the Act are not transferable. The new law seeks to dispel the singular problem that although LEC and non-LEC pay telephones compete head-to-head in the marketplace, they have been operating under fundamentally different regulatory conditions. Section 276 tries to address that problem by making the LECs look more like private providers; AT&T's view would swim against that current by making the private payphones look more like the regulated telephones of the LECs. The Commission should reject such contentions and adhere to the compensation plan as it is set forth in the Order.

II. LECs Should Not Be Placed on the List of Carriers Contributing to the \$45.85 Flat Rate.

Several commenters assert that Appendix F of the Order should be revised to include BOCs or other LECs among the carriers who are

³ *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, FCC 96-325 (released Aug. 8, 1996).

required to contribute proportionally to the \$45.85 flat-rate compensation that pay telephone owners will receive during the first year of the compensation plan. That claim should be rejected. The BOC/LEC traffic patterns are basically distinct from those of the other carriers on the list, and attempting to compare the carriers based upon 1995 toll revenue would be a fundamentally skewed computation. As discussed elsewhere,⁴ the \$45.85 is intended to represent compensation *only* for dial-around and "800" calls, not for presubscribed "0+" calls, but BOC traffic is primarily intraLATA and primarily within the presubscribed "0+" category. BOCs and other LECs have not sought to promote their dial-around intraLATA traffic. Moreover, in the face of the interLATA restriction contained in the MFJ (which remained in effect during 1995), interexchange carriers have captured the vast majority of both interLATA and intraLATA "800" traffic, except to the extent that BOCs were able to sell "800" to some of those very few customers who need an intraLATA-only "800" service, or to those who are willing to accept a divided service in which calls to the same "800" number are carried by an interexchange carrier from distant points and by the BOC from within the LATA. Thus the BOCs receive only a small

⁴ See note 10, *infra*.

measure of the types of traffic the \$45.85 is intended to stand for, and there is no justification for adding them to Appendix F.

III. Semi-Public and "Low Pay" Payphones Should Not Be Excluded from Compensation.

AT&T also contends that interim compensation payments should be abolished for semi-public phones and those generating less than \$4.00 per day. However, these arguments cannot be sustained in view of the statutory provisions. Section 276(d) specifically defines "payphone service" to include "the provision of semi-public pay telephones." Furthermore, Section 276(b)(1)(A) makes clear that compensation must be paid for "for each and every completed intrastate and interstate call." That rule cannot be met if low-paying phones are excluded.

Furthermore, the purported justification for the exclusion of low-volume telephones is AT&T's mere speculation that otherwise there might be "uneconomic incentives for PSPs to install new — and otherwise unnecessary — payphones for the sole purpose of obtaining interim compensation."⁶ Even if that were a valid concern and the lowest-volume telephones were eliminated, the Commission's estimate

⁶ AT&T at 17.

of 131 access code calls and subscriber "800" calls per month⁶ would just have to be revised upward to reflect the greater traffic volume at the phones that still remained eligible. In sum, AT&T's effort to exclude semi-public and low-volume payphones leads nowhere and should be rejected.

IV. Screening Digits Should Not Become a Condition of Receiving Pay Telephone Compensation.

AT&T observes that the Order (at ¶ 66) speaks of requiring "PSPs" to transmit information digits for fraud control, but complains that the order does not expressly make that a condition of receiving pay telephone compensation. This complaint should be rejected. First of all, it is not all PSPs, but just those affiliated with LECs, who are in a position to send such digits, and they are sent (or not sent) in regard to the potential for fraud from all payphones, including those of the private payphone owners. Given the degree of separation that Section 276 requires to be maintained between the telephone network and the LEC payphone operations, the type of interdependence that AT&T seeks between the sending of digits by the network and the receipt of compensation by the LEC's own pay telephones would be impermis-

⁶ See Order at ¶ 125.

sible. In any case, this issue is currently being investigated outside the scope of the compensation plan and is already the subject of its own order.⁷ No need has been shown to build a bridge connecting these two issues.

V. Ameritech's Existing "0+" Compensation Should Continue Until Replaced by Permanent Compensation.

In its Petition for Reconsideration, Ameritech recounted that since May 24, 1996, under a waiver,⁸ Ameritech has been collecting a 25¢-per-call payphone charge under tariff from interexchange carriers. As the Commission's waiver order required, that tariff also made a corresponding reduction in the carrier common line charge to reflect the

⁷ See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, 3d Report & Order (released Apr. 5, 1996) at ¶ 34. It must be added, of course, that although Ameritech has undertaken to implement that order by installing the capability of sending such information digits from 400 out of 671 Ameritech end offices, it also, on October 17, 1996, sought a waiver from the Commission as to the remaining 271 offices, upon the ground that interexchange carriers had utilized the service in only 34 end offices out of those first four hundred. Similar waivers have been sought on behalf of other LECs, which makes it all the more appropriate that the issue of the information digits remain confined to the proceedings in which it was first brought up.

⁸ *In re Ameritech Operating Companies Petition for Waiver of Part 69 of the Commission's Rules To Restructure Its Rates To Establish a Pay Telephone Use Fee Rate Element [etc.]*, Order of the Chief, Common Carrier Bureau (released March 1, 1996) [hereinafter cited as "Ameritech Payphone Waiver"]. Southwestern Bell Telephone (referred to as "SWBT" in the quotations that follow) was also granted a waiver in the same proceeding, but did not pursue the matter further by filing a tariff.

removal of payphone costs from the rates paid at non-payphones. By the time of the waiver, the Telecommunications Act of 1996 had already become law, so the waiver specified that the Ameritech payphone per-call charge was to be an "interim" measure that would remain in place until superseded by pay telephone compensation under Section 276 of the Act.⁹

The Ameritech per-call charge applies on all types of pay telephone calls, including presubscribed "0+", dial-around, and "800." However, the \$45.85 flat-rate interim compensation provided for in the initial phase of the Order is earmarked as representing *only* dial-around and "800" calls.¹⁰ In its Petition for Reconsideration, Ameritech stated that

⁹ The Commission said:

In light of the fact that, in the near future, the Commission will be initiating a proceeding to implement the payphone provisions of the Telecommunications Act of 1996, we do not prescribe a methodology for future pricing of the payphone use fee in this order. Instead, we permit Ameritech and SWBT to set the initial rate in accordance with their proposals, and we direct them not to propose increases or reductions in that rate until the conclusion of our proceeding implementing the payphone provisions of the Act. Because the Act requires Commission action on this issue before the end of the year, we believe the retention of the initial rate without change during this period will not be harmful to Ameritech, SWBT, or their customers. Accordingly, we grant the waivers requested by Ameritech and SWBT on an interim basis pending the conclusion of the Commission's proceeding implementing the payphone provisions of the Act.

Ameritech Payphone Waiver, *supra* note 8, at ¶ 34, pp. 39-40.

¹⁰ Thus the Order, App. D, ¶ 3, as amended by the Further Errata released Oct. 8, 1996, amends § 64.1301(a) of the Rules to read as follows: "Each payphone service provider eligible to receive compensation shall be

(Footnote Continued . . .)

it would file a tariff change to remove the existing per-call charge to the extent it duplicates compensation included in the \$45.85 flat rate but, since the \$45.85 does not include presubscribed "0+" calls, that Ameritech would propose to retain its tariffed charge for presubscribed "0+" calls temporarily until the next phase of the compensation plan.¹¹

Parity between LEC and non-LEC payphones requires that Ameritech's per-call charge should be retained for "0+." It is evident that the reason the Commission has excluded "0+" calls from the scope of the \$45.85 flat rate is to allow for the fact that many non-LEC pay telephones already receive contractual "0+" payments — payments that *they* will continue to receive *in addition to* the flat rate of \$45.85. The very similar payments presently made to Ameritech for "0+" should likewise be allowed to continue on top of the \$45.85. Besides ensuring that LEC and non-LEC telephones are treated the same as to their existing compensation, this is also the only way to carry out the origi-

(Footnote Continued . . .)

paid \$45.85 per payphone per month for originating *access code and toll-free calls* [emphasis added]. Also, ¶ 125 states [footnote omitted]: "Based on the call volume data provided by the PSPs, we conclude that, for purposes of calculating flat-rate compensation, that the average payphone originates a combined total of 131 access code calls and subscriber 800 calls per month. When 131 calls per month is multiplied by the \$.35 compensation amount, the monthly flat-rate compensation amount is \$45.85."

¹¹ I.e., until the 35¢ charge arrives that will apply to *all three* categories of payphone calls.

nal intent of the waiver order that the per-call tariff should remain in force until it is replaced by compensation under Section 276; under the Order, Section 276 so far does not provide any replacement compensation for "0+" calls within the \$45.85 flat rate. Compensation for those "0+" calls must nevertheless continue, which can be accomplished either by merely allowing the Ameritech tariff to remain in effect, or by establishing the same 25¢ as a special non-tariff charge payable by interexchange carriers at pay telephones.¹²

In its Petition for Reconsideration, the Coalition of six RBOCs¹³ proposes a different fix for the problem that the \$45.85 omits any compensation for "0+", although the Coalition's proposal applies only at

¹² The fact that the per-call charge still applying to "0+" payphone calls would still be embodied in a tariff applicable at payphones should not be an obstacle to the continued collection of the 25¢, since the tariff at the time it was established was supported by costs that were just as free of any of the "subsidies" condemned by Section 276 as the \$45.85 will be. On the other hand, if the Commission wishes to adhere strictly and literally to the complete detariffing of payphones, it may elect to cancel the Ameritech tariff completely and order IXCs to continue paying the same charges outside the tariff (only for "0+", of course). The Commission's powers under Sec. 276 to establish a per-call payphone compensation plan plainly include the power to order the transitional, uninterrupted continuation of interim payments established under the former mode of regulation, whether or not formally embodied in a tariff, until they are able to be replaced by the permanent form of compensation established under the new law.

¹³ Bell Atlantic Corp., BellSouth Corp., NYNEX Corp., Pacific Telesis Group, Southwestern Bell Telephone Co., U S WEST, Inc., The RBOC Payphone Coalition's Petition for Clarification, filed Oct. 21, 1996 [hereinafter "RBOC Coalition"], at 3-6.

inmate telephones (which make only "0+" calls). The Coalition seeks to have the Commission amend the Order by imposing either a 35¢ per-call charge or a \$45.85 flat rate at all inmate telephones. Ameritech supports these proposals, particularly the per-call charge, and if the Commission grants such relief to all BOCs (or all LECs) it will be unnecessary for Ameritech to seek the continuation of its existing tariffed per-call charge at inmate telephones.

On the other hand, even if the Coalition's proposal for a new "0+" inmate charge is denied, that should not prevent the continuation of Ameritech's existing, established charge for "0+" calls at inmate telephones and other pay telephones. That charge has already been authorized by a waiver and been filed in an approved tariff, and moreover it is already being paid every month by all IXCs who receive calls from Ameritech payphones. It is therefore entitled to be preserved during the interim just as surely as the existing "0+" payments that are made at non-LEC telephones. Section 276 obviously was put into the Telecommunications Act to *establish* fair compensation for payphones where it was not already in place; there is no way to construe that Section to *abolish*, without replacement, fair payphone compensation that is already being paid, especially when paid under express authority already duly granted by the Commission.

VI. Attacks Upon the Commission's Asset Valuation Treatment Should Be Rejected.

The RBOC Coalition asks the Commission to confirm, with respect to the application of the affiliate transaction rules, that intangible assets are limited to those recorded on the LECs' books.¹⁴ Ameritech agrees. As shown by the Coalition, this would be fully consistent with previous Commission rulings on this subject. Furthermore, as the Commission notes,¹⁵ evaluation of the nonstructural accounting safeguards, *i.e.*, the Joint Cost Rules (§§ 64.901-64.904) and the Affiliate Transaction Rules (§ 32.27), is already the subject of a separate rulemaking.¹⁶ Any change in the application of the rules should be as a result of that comprehensive proceeding.¹⁷

APCC devotes the bulk of its Petition to an attack against the valuation principles stated in the Order,¹⁸ claiming that the Commis-

¹⁴ RBOC Coalition at 9-10.

¹⁵ Order at ¶ 145.

¹⁶ *In re* Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Notice of Proposed Rulemaking (released July 18, 1996).

¹⁷ As it stated in its Comments in that rulemaking filed August 26, 1996, Ameritech continues to maintain that the Commission should forbear from regulation, streamline the rules, or at a minimum leave the rules as they currently are.

¹⁸ American Public Communications Council, Petition of APCC for Partial Reconsideration and Clarification, filed Oct. 21, 1996 [hereinafter "APCC"], at 8-23.

sion needs to change its determination on the manner in which LECs are to value their payphone assets. The Commission has already shown, however, that since Section 276 does not require a BOC to establish a separate affiliate, and since Computer Inquiry III non-structural accounting safeguards were to be prescribed at a minimum, directing the assets to be transferred to a separate set of books ignores the Joint Cost Rules, which are unequivocally part of the accounting safeguards.¹⁹

APCC claims that the legislative history "plainly" and "unambiguously" supports the APCC valuation theory, but that is evidently based upon nothing more specific than a statement in the Conference Report indicating that the valuation should be "appropriate." In an attempt to show that the Act requires a transfer to a separate set of books, APCC maintains that the discussion of Computer Inquiry III accounting safeguards had nothing to do with the discontinuation of access charge elements and subsidies.²⁰ APCC chooses to ignore the plain meaning of the Act itself, which explicitly states that Computer III safeguards are to be adopted at a minimum to implement the prohibition against cross-subsidy and discrimination. Those safeguards are

¹⁹ Order at ¶ 170.

²⁰ APCC at 14.

codified as a complementary set of accounting safeguards for the integrated provision of nonregulated services at §§ 64.901-64.904 and for the separate provision of nonregulated services at § 32.27. The Commission was correct to conclude that since there was no requirement to transfer the payphone assets to a separate affiliate, the rules for the integrated provision of nonregulated services were appropriate and those rules do not require the transfer of assets to a separate set of books.²¹ Consequently, the Commission's action is fully consistent with the statutory mandate.

APCC maintains that the Commission's CPE detariffing order demonstrates that the Commission erred in not requiring the payphone assets be transferred to a separate set of books because the Commission mandated such treatment for CPE.²² APCC fails to acknowledge, however, that the rules in effect for the detariffing of CPE preceded the integrated provision of nonregulated services and preceded the adoption of the nonstructural accounting safeguards by four years. CPE detariffing, with respect to the accounting treatment, and the assignment to separate books, is not comparable to payphone deregulation.

²¹ This is also consistent with § 32.23 of the Rules.

²² APCC at 12.

APCC states that the Commission has provided no justification for not applying the economic value of the assets when there is no transfer to a separate set of books (APCC at 16). The Commission, in explaining its decision on the transfer or reclassification of the payphone assets, fully justified its requirements.²⁹

Using regulated accounts serves the public interest by allowing Commission scrutiny of nonregulated activities as they potentially impact regulated activities, maintaining a minimal amount of regulatory burden while protecting regulated ratepayers from cross-subsidies and cost misallocations, and preserving economies of scope that accrue to ratepayers from integrated operations.

APCC simply fails to recognize the dual nature of the Commission's accounting nonstructural safeguards of which the integrated provision of nonregulated services is an integral part and for which the cost allocation process, *i.e.*, use of the regulated accounting structure to apportion costs to both regulated and nonregulated, has performed what it was originally designed to do.

APCC has provided no reasoned basis for the Commission to reconsider its Joint Cost Rules as applied to the deregulation of payphones, and the Commission should affirm its original determination, clarifying it as requested by the RBOC Coalition.

²⁹ Order at ¶ 171.

VII. Conclusion

The Commission's pay telephone compensation plan is fundamentally sound, and objections to its choice of a market-based compensation mechanism should be rejected. Claims that LECs should be placed on the list of carriers contributing to the \$45.85 flat rate, or that semi-public and low-volume payphones should not receive compensation, or that the sending of screening digits by LECs should be a condition of their receiving compensation, also should be rejected.

Furthermore, even if the Commission denies the 35¢-per-call (or \$45.85 flat rate) LEC "0+" compensation for inmate telephones being sought by the RBOC Coalition, Ameritech's existing "0+" payments, which have already been duly authorized by a waiver and been embodied in an approved tariff, should continue at both inmate and non-inmate pay telephones as a matter of parity with non-LEC telephones, who are being allowed to continue to collect existing compensation for their "0+" calls while still receiving the \$45.85 flat rate

compensation. Nothing in Section 276 can be construed to eliminate any existing fair compensation at pay telephones until it has been replaced by a corresponding form of permanent fair compensation under the Act.

Respectfully submitted,



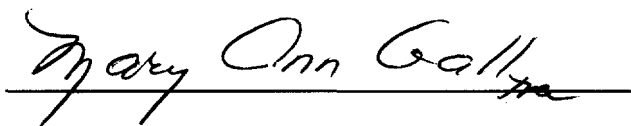
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October 28, 1996

PROOF OF SERVICE

I hereby certify that on this 28th day of October, 1996, the foregoing Opposition of Ameritech to Petitions for Reconsideration was served by depositing copies thereof in the U.S. Mail at Chicago, Illinois, addressed to each person shown on the following list.



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